

May 19, 2000

*Patients' Bill of Rights*

## **GAO Report on 4-Year Old HIPAA Suggests HCFA Couldn't Manage Kennedy-Dingell**

House and Senate negotiators are currently trying to reach agreement on the scope of the Patients' Bill of Rights. The question: Should the federal government regulate every American's health insurance, or should the federal government only regulate where states are unable to act?

Senate Republicans — with S. 1344 as their starting point — insist on a restrained federal role. Costly health insurance regulations are one of the principal reasons 44 million Americans lack coverage. Allowing states to tailor their regulations to local needs will cause fewer Americans to be priced out of coverage. Moreover, states have not been hesitant to regulate where they see fit. According to BlueCross/BlueShield, 43 states have enacted a comprehensive patients' bills of rights for state-regulated health insurance. Even more have banned so-called "gag clauses" (48 states), implemented emergency care mandates (45 states), and stipulated grievance procedures (50 states).

In late March, the General Accounting Office (GAO) offered another reason why Congress should defer to the states: federal bureaucrats aren't up to the task.

The House-passed Kennedy-Dingell bill (H.R. 2990) would charge the Health Care Financing Administration (HCFA) with oversight of states' compliance with the new federal guidelines. The last time Congress gave HCFA such authority was under the more limited Health Insurance Portability and Accountability Act of 1996 (HIPAA). Yet nearly four years after HIPAA was enacted, the GAO found HCFA was still "in the early stages" of implementing the law:

*HCFA has overcome some barriers it had previously identified as contributing to its minimalist approach to enforcing HIPAA and the related laws, including clarifying its regulatory authority and having sufficient staff resources for HIPAA oversight and enforcement. However, nearly 4 years after HIPAA's enactment, HCFA continues to be in the early stages of fully identifying where federal enforcement will be required.*

HCFA still doesn't even know how many states have complied with HIPAA, yet GAO reports the agency "did not provide explicit time periods for completing these reviews," and "HCFA is largely reacting to consumers' complaints as a means of fulfilling its statutory mandate." HCFA is likewise behind in its oversight of health plans for state and local government employees:

*HCFA has yet to fully determine its enforcement responsibilities among the remaining [state and local] government [health] plans and is instead relying on complaints from enrollees to identify compliance problems.*

HIPAA required HCFA to come up with regulations to help employers and health plans comply with the act's nondiscrimination requirements. According to the GAO, and again nearly four years after HIPAA was enacted:

*[T]he final regulations regarding HIPAA's nondiscrimination provisions remain pending and are currently under review by HCFA, Labor, and Treasury.*

HIPAA is relatively modest compared to the patients' rights legislation now in conference. If HCFA has this much difficulty implementing HIPAA, the last thing Congress should do is charge the agency with regulating all private health insurance, as the Kennedy-Dingell bill would do. Health, Labor, Education and Pensions Committee Chairman Jeffords predicts "regulatory chaos" if Kennedy-Dingell becomes law.

Many outside observers agree. On May 6, the National Conference of State Legislatures (NCSL) approved a resolution opposing the House approach, saying it would preempt state laws and task the federal government with laws and regulations that it is "ill-prepared to monitor and enforce." NCSL instead called on Congress to adhere to the Senate language. According to the Bureau of National Affairs, "The [NCSL] resolution said the Senate version of the legislation preserves the role of states as insurance regulators, instead focusing most of its attention on federally regulated, self-funded plans governed by the Employee Retirement Income Security Act" [BNA Daily Report for Executives, 5/9/00].

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